

**NO. 47796-3-II**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ARTHUR DOVE, PETITIONER

---

Appeal from the Superior Court of Pierce County  
The Honorable John R. Hickman

No. 13-1-04138-5

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**STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Is this petition time barred because it was filed over one year after his judgment and sentence became final?
2. Should the Court decline to hear this petition pursuant to RAP 16.4 because petitioner is not “restrained” due to this issue and he has alternative remedies to address this issue?

B. STATEMENT OF THE CASE.

Arthur Dove (“petitioner”) is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 13-1-04138-5.

Appendix A. Petitioner pleaded guilty to one count of rape of a child in the second degree and was sentenced on March 21, 2014. Appendix A. The trial court ordered him to pay \$1401.78 in legal financial obligations as part of this sentence. Appendix A.

Petitioner did not file a direct appeal. On July 15, 2015, more than one year after his judgment became final, petitioner filed this petition, collaterally attacking his legal financial obligations based on *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

C. ARGUMENT.

1. THIS PETITION IS UNTIMELY.

a. Time bar.

A PRP or other collateral attack must be filed within 1 year from the date that the judgment becomes final, unless the judgment and sentence is invalid on its face, the trial court lacked competent jurisdiction, or the petition falls under an enumerated exception under RCW 10.73.100. RCW 10.73.090(1); RCW 10.73.100. A judgment is considered final at the latest of the following dates: (1) it is filed with the clerk of the trial court, (2) a mandate is issue by an appellate court after a direct appeal following a conviction, or (3) when the United State Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. RCW 10.73.090(3). Petitioner's sentence became final when it was filed with the clerk of the court on March 21, 2014. RCW 10.73.090(3)(a); Appendix A. Because this petition was filed more than one year after petitioner's judgment became final, petitioner must demonstrate that his judgment and sentence is invalid on its face or he meets an enumerated exception to the time bar. Petitioner cannot meet either of these requirements, so his petition must be dismissed.

b. Facial invalidity.

The "facial validity" of a judgment has been much discussed by the appellate courts. A judgment and sentence may be shown to be facially invalid if, without further elaboration, it shows an error. *In re*

***Personal Restraint of Clark***, 168 Wn.2d 581, 585, 230 P.3d 156 (2010).

In recent cases, the Supreme Court has focused on true facial validity of the judgment. See ***In re Personal Restraint of Coats***, 173 Wn.2d 123, 138, 267 P.3d 324 (2011). The judgment is invalid only where the judgment and sentence exceeded a court's legal authority. *Id.*, at 136. A claim that the judgment is not valid on its face may not be used to make an end run around the time limit and a personal restraint petition. ***In re Coats***, 173 Wash. 2d at 141.

In this case, petitioner argues that the judgment and sentence is facially invalid because the "trial court exceeds its authority when it imposed discretionary LFOs without inquiring into [petitioner's] ability to pay" (Petition at 14). This argument has already been rejected by ***In re Flippo***, -- Wn. App. --, 362 P.3d 1011, 1014 (Wash. Ct. App. 2015). The Court noted that all of the LFOs imposed were authorized by statute. *Id.* As the LFOs were authorized by statute, the judgment and sentence is facially valid.

Similarly to ***Flippo***, the LFOs in this case were all authorized by statute. The judgment and sentence shows no facial invalidity. First, RCW 9.94A.753(4) and (5) dictate that "[r]estitution shall be ordered whenever the offender is convicted of an offense which results in ... damage to or loss of property" and "[t]he court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount." Additionally, a \$500 victim assessment is required

by RCW 7.68.035(1)(a), a \$100 DNA collection fee is required by RCW 43.43.7541, and a \$200 criminal filing fee is required by RCW 36.18.020(2)(h), irrespective of the defendant's ability to pay. *See State v. Curry*, 62 Wn. App. 676, 680–81, 814 P.2d 1252 (1991), *aff'd*, 118 Wn.2d 911, 829 P.2d 166; *State v. Thompson*, 153 Wn. App. 325, 336, 223 P.3d 1165 (2009). Finally, \$500 for petitioner's court-appointed attorney fees and defense costs. This cost is also authorized by statute. RCW 10.01.160; RCW 10.73.160; *State v. Smits*, 152 Wn. App. 514, 519, 216 P.3d 1097 (2009). Each of the LFOs imposed in this case were authorized by statute, so the judgment and sentence is facially valid. The Court should dismiss this petition as untimely.

c. Significant Change in the Law

If the judgment and sentence is valid on its face, then defendant next argues that his petition is not time barred because *Blazina* constitutes a significant change in the law. Petition, 18.

The “significant change in the law” exemption in RCW 10.73.100(6) applies when an intervening appellate decision overturns a prior appellate decision that was terminative of a material issue. *In re Tsai*, 183 Wn.2d 91, 104, 351 P.3d 138 (2015). “One test to determine whether an appellate decision represents a significant change in the law is whether the defendant could have argued the issue before publication of the decision: *In re Stoudmire*, 145 Wn.2d 258, 264, 36 P.3d 1005 (2001) “A significant change in the law requires that the law, not counsel’s



understanding of the law on an unsettled question, has changed.” *State v. Miller*, Supreme Court Case No. 91065-1 (February 11, 2016), Slip Op. at 5.

Prior to *Blazina*, petitioner could have asked the trial court to not impose legal financial obligations based on his lack of ability to pay. Defendants have been arguing against the imposition of LFOs for many years prior to the *Blazina*. See, e.g., *State v. Lundy*, 176 Wn. App. 96, 308 P.3d 755 (2013); *State v. Williams*, 65 Wn. App. 456, 828 P.2d 1158 (1992) mandate recalled and modified by 840 P.2d 902 (1992); *State v. Earls*, 51 Wn. App. 192, 752 P.2d 402 (1988). Because petitioner could have made this argument prior to *Blazina*, *Blazina* is not a significant change in the law. “*Blazina* only confirms, and does not alter, what has always been required of the sentencing court under RCW 10.01.160(3) –a statute that was enacted in 1976 and has remained unchanged.” *Flippo*, 362 P.3d at 1013.

Even if defense counsel were not regularly objecting to the imposition of LFOs prior to *Blazina* as petitioner argues (Petition, 20), a change in the understanding of the law does not constitute a significant change in the law under the recently decided *Miller* case. As in *Miller*, nothing prevented petitioner from arguing against the imposition of LFOs in this case. *State v. Miller*, Supreme Court Case No. 91065-1 (February 11, 2016), Slip Op. at 5. Again, because petitioner could have made these

arguments to the trial court prior to *Blazina*, *Blazina* does not constitute a significant change in the law.

*Flippo* correctly held that *Blazina* is not a significant change in the law. *Flippo*, 362 P.3d at 1014. The Court should reject petitioner's arguments attempting to refute *Flippo*'s reasoning and dismiss this petition as untimely.

2. THE PETITION FAILS TO MEET THE REQUIREMENTS OF RAP 16.4.

"Personal restraint petitions are modern versions of ancient writs, most prominently habeas corpus, that allow petitioners to challenge the lawfulness of confinement." *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 128, 267 P.3d 324 (2011) (citing *Toliver v. Olsen*, 109 Wn.2d 607, 609–11, 746 P.2d 809 (1987)). Relief by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment. *Id.* at 132. A personal restraint petition is not a substitute for statutory avenues for review, and "[t]o prevent it from becoming a substitute for an appeal, and to protect the finality of judgments, th[e] court has imposed significant threshold, prima facie burdens on the petitioner before the merits of the substantive claim will be considered." *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 211, 227 P.3d 285 (2010).

RAP 16.4(a) requires that the petitioner is under restraint and that restraint is unlawful. RAP 16.4(a). RAP 16.4(b) defines restraint as

[i]f the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

RAP 16.4(b).

Petitioner in this case is not challenging his conviction; he is only challenging his LFOs and the only amount truly at issue as a discretionary fine is the \$500 imposed as recoupment for his public defender. The petition does not allege that a failure to pay this \$500 has caused him to lose his freedom, be confined, that he is under threat of imminent confinement, or that this has resulted in some other disability<sup>1</sup> to him. Without some showing that he is under restraint due to this \$500 fine, the Court should dismiss this petition.

Additionally, pursuant to RAP 16.4(d):

[t]he appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090 or .100

RAP 16.4(d).

RCW 10.01.160(4) allows a defendant to move for remission of the payment of LFOs at any time. Petitioner can also move to reduce or waive the interest on his LFOs under RCW 10.82.090(2). As there are

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<sup>1</sup> Petitioner might argue that this \$500 fine constitutes a disability, but his petition includes no evidence to prove this. He has offered no argument that the State is seeking to collect this money, that funds are being garnished, that interest is accruing, etc.

other statutory remedies which may be available to petitioner, the Court should dismiss this petition.

In upholding the constitutionality of repayment conditions on probation, the Washington Supreme Court noted that “a convicted person under obligation to repay may petition the court for remission of the payment of costs or of any unpaid portion thereof. *State v. Barklind*, 87 Wn.2d 814, 817, 557 P.2d 314 (1976). “The statute allows a defendant to seek remission at any time. *State v. Blank*, 131 Wn.2d 230, 246, 930 P.2d 1213 (1997). The correct remedy where for a defendant is unable to pay assessments is to request a hearing. *State v. Langford*, 67 Wn. App. 572, 588, 837 P.2d 1027 (1992).

Petitioner can move to remit these LFOs and interest pursuant to 10.01.160(4) and 10.82.090(2). There is a statutory framework that provides him with an adequate remedy to address his LFOs at the trial court level. The Court should dismiss this petition until he has availed himself to these remedies.

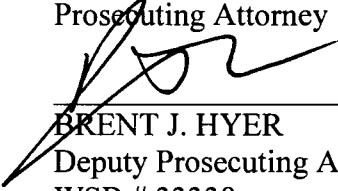
D. CONCLUSION.

This petition is untimely and the Court should dismiss it as the judgment and sentence is valid on its face and *Blazina* does not constitute a significant change in the law. Even if the Court were to find that it were

timely, the petition fails to meet the requirements of RAP 16.4 as  
petitioner is not restrained because of this issue and he has other means  
that may provide a remedy to him. The Court should dismiss this petition.

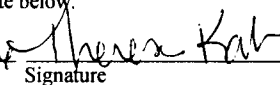
DATED: March 8, 2016.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

  
\_\_\_\_\_  
BRENT J. HYER  
Deputy Prosecuting Attorney  
WSB # 33338

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or  
ABC-LMI delivery to the attorney of record for the appellant and appellant  
c/o his attorney true and correct copies of the document to which this certificate  
is attached. This statement is certified to be true and correct under penalty of  
perjury of the laws of the State of Washington. Signed at Tacoma, Washington,  
on the date below.

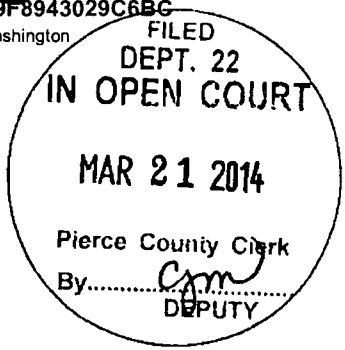
3/10/16   
\_\_\_\_\_  
Date Signature

# **APPENDIX “A”**

*Judgment and Sentence*



Case Number: 13-1-04138-5 Date: March 9, 2014  
 SerialID: 8DD34A57-38B7-4123-B0B9F8943029C6BC  
 Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

MAR 21 2014

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 13-1-04138-5

vs

ARTHUR LEWIS DOVE,

Defendant

WARRANT OF COMMITMENT

- 1) ☐ County Jail
- 2) ☒ Dept. of Corrections
- 3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

7 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF  
 COMMITMENT -1

Office of Prosecuting Attorney  
 930 Tacoma Avenue S. Room 946  
 Tacoma, Washington 98402-2171  
 Telephone: (253) 798-7400

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for  
classification, confinement and placement as ordered in the Judgment and Sentence.  
(Sentence of confinement or placement not covered by Sections 1 and 2 above).

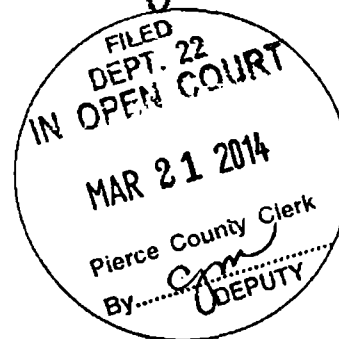
Dated: 3/21/14

By direction of the Honorable

John R. Hickman  
JUDGE JOHN R. HICKMAN  
KEVIN STOCK

CLERK  
By: Mag Montiel  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF  
MAR 21 2014 By Mag Montiel Deputy



STATE OF WASHINGTON

ss.

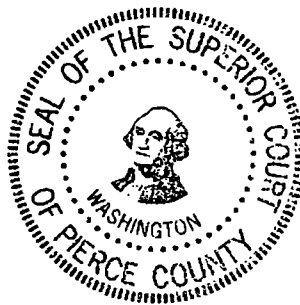
County of Pierce

I, Kevin Stock, Clerk of the above entitled  
Court, do hereby certify that this foregoing  
instrument is a true and correct copy of the  
original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of Said Court this  
\_\_\_\_\_ day of \_\_\_\_\_

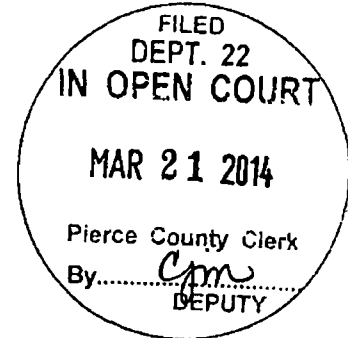
KEVIN STOCK, Clerk

By: \_\_\_\_\_ Deputy

mac







SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 13-1-04138-5

vs.

ARTHUR LEWIS DOVE

Defendant.

SID: 27370069  
DOB: 03/23/1972

JUDGMENT AND SENTENCE (FJS)

☒ Prison  
☒ RCW 9.94A.712 & 9.94A.507 Prison Confinement  
☐ Jail One Year or Less  
☐ First-Time Offender  
☐ Special Sexual Offender Sentencing Alternative  
☐ Special Drug Offender Sentencing Alternative  
☐ Alternative to Confinement (ATC)  
☐ Clerk's Action Required, para 4.5 (SDOSA),  
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8  
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2/7/14  
by ☒ plea ☐ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	RAPE OF A CHILD IN THE SECOND DEGREE (137)	9A.44.076		9/01/13-10/24/13	PCSD 132971054

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 1 of 12

14902855 6

- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	0	XI	78-102 MONTHS TO LIFE		78-102 MONTHS TO LIFE	LIFE/50K

For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows:

- 2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
- ☐ within ☐ below the standard range for Count(s) \_\_\_\_\_.
- ☐ above the standard range for Count(s) \_\_\_\_\_.
- ☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- ☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

- ☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- ☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 ☐ FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9A1.010.

- ☐ The court considered the following factors:

- ☐ the defendant's criminal history.
- ☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
- ☐ evidence of the defendant's propensity for violence that would likely endanger persons.
- ☐ other: \_\_\_\_\_

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 2 of 12

Office of Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

[ ] The court decided the defendant [ ] should [ ] should not register as a felony firearm offender.

### III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts \_\_\_\_\_ [ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

### IV. SENTENCE AND ORDER

#### IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

#### JASS CODE

RTNR/N \$ 82.13 Restitution to: VR 92033  
\$ 119.65 Restitution to: 101190178WA  
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).  
PCV \$ 500.00 Crime Victim assessment  
DNA \$ 100.00 DNA Database Fee  
PUB \$ 500 Court-Appointed Attorney Fees and Defense Costs  
FRC \$ 200.00 Criminal Filing Fee  
FCM \$ \_\_\_\_\_ Fine

#### OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 1401.79 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor, if necessary

[ ] is scheduled for \_\_\_\_\_

[ ] RESTITUTION. Order Attached

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(2).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per CCO per month commencing Per CCO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

#### JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 12

[ ] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

**COLLECTION COSTS** The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.12.190, 9.94A.720 and 19.16.500.

**INTEREST** The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

**COSTS ON APPEAL** An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[X] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with J.P. 5/22/01 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

<i>Abide by formal no contact order</i>
<i>Abide by all conditions of SCC &amp; Appendix H of the PSI</i>
<i>Psychological evaluation &amp; follow-up treatment</i>
<i>Legal financial obligations including any restitution</i>
<i>Register as sex offender per statute</i>
<i>Refrain from alcohol consumption</i>
<i>No contact with minor</i>

4.4a [X] All property is hereby forfeited

[ ] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

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\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

9.94A.507  
CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 102 Months Maximum Term: Life

Count \_\_\_\_\_ Minimum Term \_\_\_\_\_ Months Maximum Term: \_\_\_\_\_

Count \_\_\_\_\_ Minimum Term \_\_\_\_\_ Months Maximum Term: \_\_\_\_\_

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: months & life

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 147 Days

4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

[ ] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

Count(s) \_\_\_\_\_ 18 months for Violent Offenses

Count(s) \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

9.94A.507  
[X] COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count I until \_\_\_\_\_ years from today's date [X] for the remainder of the Defendant's life.

Count \_\_\_\_\_ until \_\_\_\_\_ years from today's date [ ] for the remainder of the Defendant's life.

Count \_\_\_\_\_ until \_\_\_\_\_ years from today's date [ ] for the remainder of the Defendant's life.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody.

Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

[X] consume no alcohol.

[X] have no contact with: T.P. 4 minor

[ ] remain [ ] within [ ] outside of a specified geographical boundary, to wit: \_\_\_\_\_

[X] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[X] participate in the following crime-related treatment or counseling services: Pen CCO

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930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management and fully comply with all recommended treatment.

☒ comply with the following crime-related prohibitions: Per cco

☒ Other conditions:

Per cco

☐ For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 ☐ WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.94A.507  
CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count I Minimum Term: 102 Months Maximum Term: Life

Count \_\_\_\_\_ Minimum Term \_\_\_\_\_ Months Maximum Term: \_\_\_\_\_

Count \_\_\_\_\_ Minimum Term \_\_\_\_\_ Months Maximum Term: \_\_\_\_\_

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. ☐

COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count I until \_\_\_\_\_ years from today's date ☒ for the remainder of the Defendant's life.

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Telephone: (253) 798-7400

Count \_\_\_\_\_ until \_\_\_\_\_ years from today's date [ ] for the remainder of the Defendant's life.

Count \_\_\_\_\_ until \_\_\_\_\_ years from today's date [ ] for the remainder of the Defendant's life.

#### V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

[X] Defendant waives any right to be present at any restitution hearing (sign initials): *WLD*

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

1. **General Applicability and Requirements.** Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.



2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington, you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. **Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three (3) business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three (3) business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three (3) business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within three (3) business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three (3) business days after losing your fixed residence, you must provide signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within three (3) business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. **Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three (3) business days of the entry of the order. RCW 9A.44.130(7).

[X] The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

5.8 [ ] The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 3/21/14

JUDGE

Print name

John R. Hickman  
John R. Hickman

Deputy Prosecuting Attorney

Print name: Angelica Williams

WSB # 36633

Attorney for Defendant

Print name: John Piers

WSB # 23035

Defendant

Print name: ARTHUR DOVE

FILED  
DEPT. 22  
IN OPEN COURT

MAR 21 2014

Pierce County Clerk  
By: Cym  
DEPUTY

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: \_\_\_\_\_

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Office of Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 13-1-04138-5

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**Emily Dirton**

\_\_\_\_\_  
Court Reporter

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☒ sex offense - Rape Child 2  
☐ serious violent offense  
☐ assault in the second degree  
☐ any crime where the defendant or an accomplice was armed with a deadly weapon  
☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- ☒ (I) The offender shall remain within, or outside of, a specified geographical boundary: \_\_\_\_\_
- ☒ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: \_\_\_\_\_
- ☒ (III) The offender shall participate in crime-related treatment or counseling services;
- ☒ (IV) The offender shall not consume alcohol; \_\_\_\_\_
- ☒ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- ☒ (VI) The offender shall comply with any crime-related prohibitions.
- ☒ (VII) Other: Pescado

IDENTIFICATION OF DEFENDANT

SID No. 27370069  
(If no SID take fingerprint card for State Patrol)

Date of Birth 03/23/1972

FBI No. 718530CC9

Local ID No. UNKNOWN

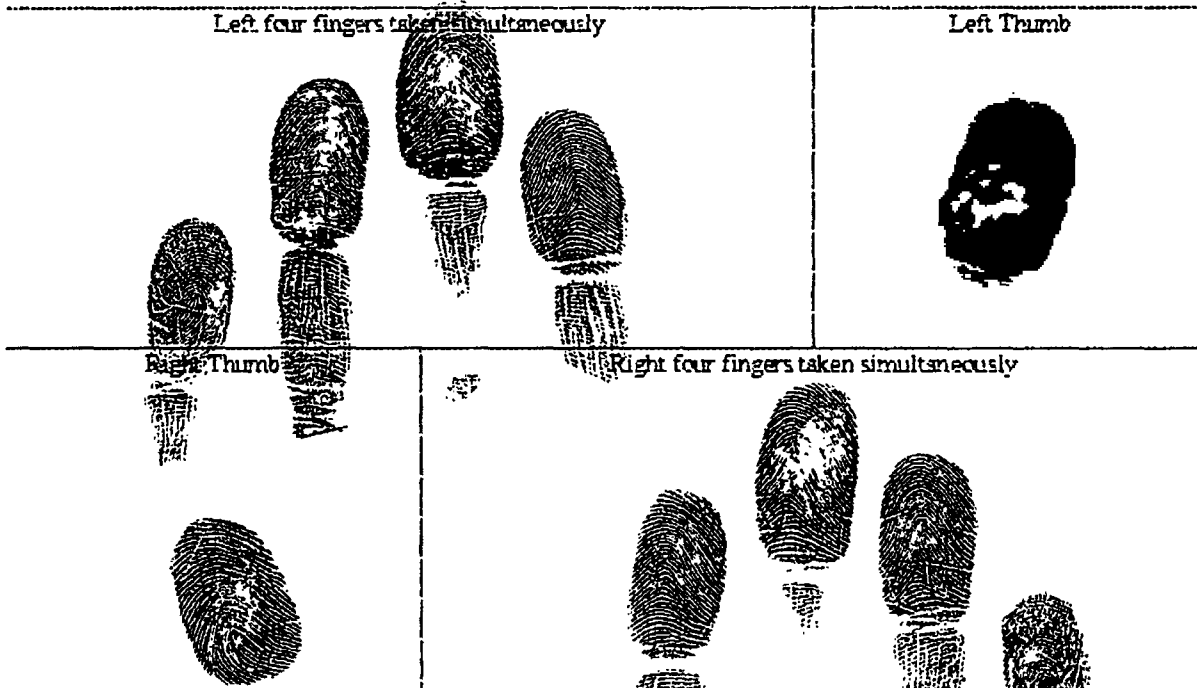
PCN No. 541085092

Other

Alias name, SSN, DOB:

Race: ☐ Asian/Pacific Islander ☐ Black/African-American ☒ Caucasian ☐ Hispanic ☒ Male  
☐ Native American ☐ Other: ☒ Non-Hispanic ☐ Female

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Dated:

DEFENDANT'S SIGNATURE:

DEFENDANT'S ADDRESS:

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 12 of 12

Office of Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.

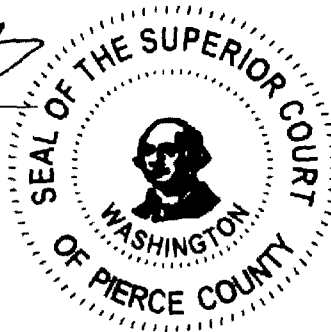
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 09 day of March, 2016



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 9, 2016 4:08 PM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter SerialID: 8DD34A57-38B7-4123-B0B9F8943029C6BC.

This document contains 15 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

# PIERCE COUNTY PROSECUTOR

**March 10, 2016 - 9:24 AM**

## Transmittal Letter

Document Uploaded: 4-prp2-477963-Response.pdf

Case Name: State v. Dove

Court of Appeals Case Number: 47796-3

**Is this a Personal Restraint Petition?** ☒ Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: \_\_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

☒ Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: [tnichol@co.pierce.wa.us](mailto:tnichol@co.pierce.wa.us)

A copy of this document has been emailed to the following addresses:

[Sloanej@nwattorney.net](mailto:Sloanej@nwattorney.net)

[nielsene@nwattorney.net](mailto:nielsene@nwattorney.net)